

17 November 2008

PRIVATE AND CONFIDENTIAL

Ms Bronwyn Nardi
Chair
Practitioner Regulation Subcommittee
Health Workforce Principal Committee

NRAIP@dhs.vic.gov.au

Dear Ms Nardi

Re: Consultation paper on proposed arrangements for handling complaints and dealing with performance, health and conduct matters.

Thank you for the consultation paper dated 7 October 2008 inviting submissions for consideration on Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters.

The NSW Chiropractors Registration Board are concerned that the paper did not take up issues about due process and the need for an independent investigator such as the Health Care Complaints Commission (NSW). Therefore the NSW Board strongly supports the continuation of the current powers of the HCCC (NSW) and believe that the HCCC (NSW) should continue to be the prosecuting body.

The NSW Board are concerned that the proposal does not adequately differentiate between performance assessment, impairments and complaints.

The New South Wales Chiropractors Registration Board wishes to make the following submission in relation to the Board's view.

1.5 Principles

The Board strongly endorses the use of the word complaint throughout the legislation.

The legislation is set up to protect the public and it should reflect what the public understands. The Board's experience is that the public have enough difficulty working out who to complain to without being confused by words designed to be generalized.

3.2 Key Features

The Board supports the principles outlined here, in particular consultation with the HCC, the division of complaints into one of three strands, the facility for Board hearings and the referral to tribunals for serious matters and appeals

Proposal 3.3.1

The Board supports the definitions but suggests that unsatisfactory professional conduct also include a provision whereby it includes any departure from a code of conduct or guidelines established by the Board.

4.4 Mandatory reporting

The NSW Board are concerned that mandatory reporting needs to be clearer and not scattered throughout the paper and consideration to the impact this may have on voluntary schemes such as those that exist in New South Wales should be considered.

The Board supports proposal option 1b

The Board does not support the concept of student registration and would be concerned about the ramifications for other students. This is particularly of concern, as the notifier and the student being complained about do not yet have a complete education.

The Board remains aware that most of the students are in their late teens and early twenties and may not yet have gained the full responsibilities and attitudes expected of a registered practitioner.

4.6 The Board supports proposal 4.6.1

4.7 Immediate suspension Powers

The Board supports proposal 4.7.1 with the term left to the Board's discretion

The Board supports the concept of Proposal 4.7.3 but would like to see a more detailed proposal.

5.3 HCC

The Board supports proposal 5.3.1 and endorses its current arrangement with the NSW HCCC

5.4 Preliminary assessment

The Board supports the establishment of state or territory complaint assessment committees with the proviso that they are constituted with professionals from nominations made by the state or territory professional associations.

Selecting people for these committees on the basis of academic merit or long service does not ensure that they are in touch with the profession's current approaches.

The NSW Board is very much aware that the nature of complaints varies remarkably between jurisdictions and that those jurisdictional variations can only be fully considered by a person in touch with the profession at a state or territory level.

5.5 Powers following preliminary assessment

The Board supports proposals 5.5.1, 2 and 3

The Board supports option 1 in relation to Notifier's rights of review i.e. No right of Review.

The notifier has brought the matter to the attention of the Board but from that moment the result is determined by careful examination of the facts in relation to the case. The outcome is determined based on defined procedures with the objective being the protection of the public.

There are likely to be outcomes that are unsatisfactory to the notifier but which serve to protect the public.

Provision of a right of appeal by the notifier is outside the parameters of the IGA as it does not serve the objectives to which the outcome of a complaint has been directed.

The IGA does not have as an objective that includes an outcome that satisfies every notifier.

6 Performance related matters

The Board supports Proposal 6.1.1 whereby performance issues are dealt with through a cooperative and educative process.

It supports the proposals listed.

7. Health related matters

The Board supports Proposal 7.1.1 whereby health issues are dealt with through a flexible process.

It supports the proposals listed.

8 Conduct matters

The Board is concerned that the notification in Proposal 8.1.1 relates to unsatisfactory professional conduct (USC).

The Board is concerned that a notification is just that, not a finding.

A finding of USC could only occur after an investigation into the conduct under question had occurred.

The Board is aware that many conduct matters are of a minor nature and may arise from small deviations from accepted normal practice. These deviations may be due to naivety

in the case of new graduates, cultural misunderstandings etc. In many of these cases a letter of caution from the complaint management committee resolves the issue at the outset without a full investigation being required.

This is a prime example where familiarity with current professional practice, culture and the professionals themselves is paramount in the selection of members of complaint management committee.

The Board supports the remainder of proposals 8.2.1-4 as they reflect the mechanism employed by the Board to its satisfaction.

8.6 Decisions available to a conduct panel following a hearing

Matters may arise in a hearing that leads to a complaint of Professional Misconduct.

The panel should have the additional option of referring the matter to a Tribunal.

9.3 Legal representation at panel hearings

The Board supports Option 4b

9.4 Confidentiality

The Board supports proposal 9.4.1

9.5 Status of notifiers

The Board supports proposal 9.5.1

9.6 Review Rights

The Board supports Proposal 9.6.1

9.8 Ombudsmen

The Board supports Option 2

10 Tribunals

The Board supports the proposals.

11 Offences and regulated conduct

The Board strongly supports the continuation of the restriction on Spinal Manipulation that exists in most jurisdictions.

Most chiropractic legislation was enacted to protect the public from persons who were not trained in the practice of spinal manipulation.

To remove the restriction would be contrary to the purpose of the IGA.

11.4 Practice offences

The Board strongly supports a Proposal 11.4.1 that makes it an offence to manipulate the joints of the human spine unless specifically exempted eg Chiropractor, Osteopath, Medical Practitioner, Physiotherapist.

The definition currently contained within the NSW Public Health Act is acceptable to the Board.

11.6 Advertising

The Board supports Proposal 11.6.1 option 2

Conclusion

The NSW Chiropractors Registration Board has taken a proactive stance in relation to complaints over the last decade.

Its activities have included:

1. Lectures to students and registrants about practice in general awareness of activity that may lead to a complaint.
2. Bulletins to all registrants about complaints and how to avoid them
3. Articles in professional association publications.

This activity, the Board believes, has contributed to the remarkably low number of complaints about chiropractors practicing in NSW. The Board has, for the past several years, received the least number of complaints for many years.

The Board believes that this approach is more effective than developing restrictive guidelines for the profession.

The Board's three page Code of Conduct provides the foundation for the Board's deliberations.

Therefore the Board is strongly supportive of general guidelines for practice being developed by a National Board with specific guidelines developed at a State or Territory level as required.

If you require any further information, please contact me on 02 9219 0206.

Yours faithfully



Amanda McEacharn
Acting Registrar